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MEMORANDUM

TO: Rep. Sarah Stevens, Chair, and Members of the Courts Commission
FROM: Kelly Quick Tornow, Staff Attorney
RE: Judicial Selection in Other States
DATE: December 5, 2014

This memorandum provides a summary of the methods of judicial selection, the methods of filling judicial vacancies, and mandatory retirement ages across the fifty states. A more detailed chart of information can be found at the end of this document.

Methods of Selection

Election – 22 states hold elections for all judges. Of these, 15 states hold nonpartisan elections (Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, Washington, and Wisconsin), and seven states hold partisan elections (Alabama, Illinois, Louisiana, New Mexico, Pennsylvania, Texas, and West Virginia).

Gubernatorial appointment from nominating commission – Five states provide for gubernatorial appointment from nominating commissions (Alaska, Colorado, Iowa, Nebraska, and Wyoming).

Gubernatorial appointment from nominating commission with legislative confirmation – Seven states require legislative confirmation after gubernatorial appointment from a nominating commission (Delaware, Hawaii, Maine, New Jersey, Rhode Island, Utah, and Vermont). Some states require confirmation from both the House and Senate while others require only Senate confirmation.

Combination of election and appointment – Eleven states select judges through a combination of elections and appointments (Arizona, California, Florida, Indiana, Kansas, Maryland, Missouri, New York, Oklahoma, South Dakota, and Tennessee). Most of these states provide for gubernatorial appointment from nominating commissions for appellate court judges and elections for trial court judges. Voters in Florida, Oklahoma, and South Dakota elect trial court judges in nonpartisan elections. Partisan elections for trial court judges are held in Indiana, Tennessee, and New York.

Legislative election – South Carolina and Virginia are the only states to use legislative election for the selection of judges. In 1996, South Carolina voters approved a constitutional amendment to establish a judicial merit selection commission. The commission submits the names of three nominees to the General Assembly, and the General Assembly must elect one of the three nominees.

Other methods – Connecticut's judges are nominated by the governor with legislative appointment. New Hampshire provides for gubernatorial nomination from a selection commission's recommendations with appointment by the executive council. Massachusetts provides for gubernatorial appointment with approval of the governor's council for Supreme Judicial Court and gubernatorial appointment from a nominating commission with approval of the governor's council for Appeals Court and Superior Court.

For more information on judicial merit selection, please visit [http://www.judicialselection.us/uploads/Documents/Judicial Merit Charts_0FC20225EC6C2.pdf](http://www.judicialselection.us/uploads/Documents/Judicial_Merit_Charts_0FC20225EC6C2.pdf).

Methods of Filling Interim Judicial Vacancies

Gubernatorial appointment from nominating commission – Sixteen states fill judicial vacancies through gubernatorial appointment from a nominating commission (Alaska, Colorado, Florida, Georgia, Idaho, Iowa, Kentucky, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, West Virginia, and Wyoming).

Gubernatorial appointment – Nine states fill judicial vacancies through gubernatorial appointment (Alabama, Arkansas, Michigan, Mississippi, North Carolina, Ohio, Oregon, Washington, and Wisconsin).

Gubernatorial appointment from judicial nominating commission with legislative consent or confirmation – Ten states fill judicial vacancies through gubernatorial appointment from a nominating commission and require legislative consent or confirmation (Delaware, Hawaii, Maine, Montana, New Jersey, Pennsylvania, Rhode Island, Texas, Utah, and Vermont). Some states require confirmation from both the House and Senate while others require only Senate confirmation.

Combination of gubernatorial appointment and gubernatorial appointment from a nominating commission – Five states use a combination of gubernatorial appointment and gubernatorial appointment from a nominating commission (Arizona, California, Indiana, Minnesota, and Missouri).

Combination of gubernatorial appointment from nominating commission with Senate confirmation/consent and gubernatorial appointment from nominating commission – Maryland and New York use a combination of gubernatorial appointment from a nominating commission with Senate confirmation and gubernatorial appointment from a nominating commission without legislative consent.

Legislative election – South Carolina and Virginia fill judicial vacancies through legislative election. The South Carolina General Assembly must elect one of the three nominees chosen by the judicial merit selection commission.

Other methods – Illinois fills judicial vacancies by Supreme Court appointment. Judicial vacancies in Louisiana are filled by special election or by Supreme Court appointment. Kansas and Massachusetts use other combinations of gubernatorial appointment from nominating commissions and legislative confirmation, while vacancies in Connecticut and New Hampshire are filled by gubernatorial nomination and appointment by either the legislature or an executive council.

Mandatory Retirement Age

Some states prescribe a mandatory retirement age, while others provide for an age range as a qualification for holding a judgeship.

22 states provide for a mandatory retirement age of 70 (Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Dakota, Vermont, Virginia, and Wyoming).

North Carolina and three other states require mandatory retirement at age 72 (Colorado, Iowa, and South Carolina).

The mandatory retirement age for judges in Oregon, Texas, Utah, and Washington is 75.

19 states do not have a mandatory retirement age for judges. (Arkansas, California, Delaware, Georgia, Idaho, Illinois, Kentucky, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Rhode Island, Tennessee, West Virginia, and Wisconsin).

Indiana requires retirement at age 75 for appellate court judges but does not provide for a mandatory retirement age for trial court judges.

JUDICIAL SELECTION IN OTHER STATES

SOURCE: AMERICAN JUDICATURE SOCIETY, "JUDICIAL SELECTION IN THE STATES"

State	Method of Selection	Method of Filling Interim Vacancies	Mandatory Retirement Age
Alabama	Partisan election	Gubernatorial appointment ¹	70
Alaska	Gubernatorial appointment from nominating commission	Gubernatorial appointment from nominating commission	70
Arizona	Appellate courts: Gubernatorial appointment from nominating commission Superior Court: Partisan primary; nonpartisan general election/gubernatorial appointment from nominating commission ²	Appellate courts: Gubernatorial appointment from nominating commission Superior Court: Gubernatorial appointment/gubernatorial appointment from nominating commission ³	70
Arkansas	Nonpartisan election ⁴	Gubernatorial appointment	None
California	Appellate courts: Gubernatorial appointment ⁵ ; confirmation by commission on judicial appointments ⁶ Superior Court: Nonpartisan election ⁷	Appellate courts: Gubernatorial appointment ⁸ ; confirmation by commission on judicial appointments ⁹ Superior Court: Gubernatorial appointment ¹⁰	None

¹ For Circuit court, gubernatorial appointments are made from lists of candidates submitted by judicial nominating commissions in Baldwin, Jefferson, Lauderdale, Madison, Mobile, Shelby, Talladega, and Tuscaloosa Counties.

² The Arizona Constitution provides for merit selection and retention of judges in counties with populations of 250,000 or greater. Currently, this includes Maricopa, Pima, and Pinal Counties. Counties in which the population is less than 250,000 may adopt merit selection through ballot initiative.

³ See footnote 2.

⁴ Judicial candidates run in a nonpartisan primary election. If no candidate receives a majority of the vote, there is a runoff in the general election.

⁵ Since 1979, the legislature has required that the State Bar of California's commission on judicial nominees evaluation (informally known as the Jenny Commission) review the qualifications and fitness of prospective judicial appointees through an extensive investigation. The commission, which consists of both public members and attorneys, rates candidates as exceptionally well qualified, well qualified, qualified, or not qualified. The governor is not bound by the commission's recommendations.

⁶ The commission on judicial appointments consists of three members: the chief justice, the attorney general, and the senior presiding justice of the court of appeal of the affected appellate district. When a Supreme Court appointee is being considered, the third member of the commission is the senior presiding justice of the state's court of appeals. The commission holds one or more public hearings to review the appointee's qualifications and may confirm or veto the appointment by majority vote.

⁷ The constitution provides that electors in each county may, by majority vote, opt for the selection of superior court judges by the method used for appellate court judges. To date, no counties have adopted an appointive process.

⁸ Since 1979, the legislature has required that the State Bar of California's commission on judicial nominees evaluation (informally known as the Jenny Commission) review the qualifications and fitness of prospective judicial appointees through an extensive investigation. The commission, which consists of both public members and attorneys, rates candidates as exceptionally well qualified, well qualified, qualified, or not qualified. The governor is not bound by the commission's recommendations.

⁹ The commission on judicial appointments consists of three members: the chief justice, the attorney general, and the senior presiding justice of the court of appeal of the affected appellate district. When a Supreme Court appointee is being considered, the third member of the commission is the senior presiding justice of the state's court of appeals. The commission holds one or more public hearings to review the appointee's qualifications and may confirm or veto the appointment by majority vote.

¹⁰ See footnote 8.

State	Method of Selection	Method of Filling Interim Vacancies	Mandatory Retirement Age
Colorado	Gubernatorial appointment from nominating commission	Gubernatorial appointment from nominating commission	72
Connecticut	Gubernatorial nomination from judicial selection commission; legislative appointment	Gubernatorial nomination from judicial selection commission; legislative appointment	70
Delaware	Gubernatorial appointment from judicial nominating commission with Senate consent ¹¹	Gubernatorial appointment from judicial nominating commission with Senate consent	None
Florida	Appellate courts: Gubernatorial appointment from nominating commission Circuit Court: Nonpartisan election ¹²	Gubernatorial appointment from nominating commission	70
Georgia	Nonpartisan election	Gubernatorial appointment from nominating commission	None
Hawaii	Gubernatorial appointment from nominating commission with Senate confirmation	Gubernatorial appointment from nominating commission with Senate confirmation	70
Idaho	Nonpartisan election	Gubernatorial appointment from nominating commission	None
Illinois	Partisan election	Supreme Court appointment	None
Indiana	Appellate courts: Gubernatorial appointment from nominating commission Circuit Court ¹³ and Superior Court ¹⁴ : Partisan election	Appellate courts: Gubernatorial appointment from judicial nominating commission Circuit Court and Superior Court ¹⁵ : Gubernatorial appointment	75 for appellate courts; None for trial courts
Iowa	Gubernatorial appointment through nominating commission	Gubernatorial appointment through nominating commission	72
Kansas	Supreme Court: Gubernatorial appointment from nominating commission	Supreme Court: Gubernatorial appointment from nominating commission	70

¹¹ The Delaware Constitution stipulates that no more than a bare majority of judges of each court may be members of the same political party.

¹² The voters in each circuit may exercise a local option for merit selection and retention of circuit court judges. A circuit may initiate the local option by filing with the secretary of state a petition signed by a number of voters equal to at least 10% of the votes cast in the circuit in the most recent presidential election. The measure must then be approved by a majority of circuit voters.

¹³ Elections for circuit court judges in Vanderburgh County are nonpartisan.

¹⁴ In Lake and St. Joseph Counties, superior court judges are appointed by the governor from lists of names submitted by local nominating commissions (except judges of the county division of the Lake County superior court, who are elected). Judges stand for retention in the first general election held more than two years after their appointment. Superior court judges in Allen County run without party designation in the general election, and vacancies are filled by the governor from a list of names submitted by the Allen County judicial nominating commission.

¹⁵ See footnote 14.

State	Method of Selection	Method of Filling Interim Vacancies	Mandatory Retirement Age
	Court of Appeals: Gubernatorial appointment with Senate confirmation District Court: Gubernatorial appointment from nominating commission (17 districts); partisan election (14 districts)	Court of Appeals: Gubernatorial appointment with Senate confirmation District Court: Gubernatorial appointment from nominating commission; gubernatorial appointment	
Kentucky	Nonpartisan election	Gubernatorial appointment from nominating commission	None
Louisiana	Partisan election	Special election ¹⁶	70
Maine	Gubernatorial appointment with Senate confirmation	Gubernatorial appointment with Senate confirmation	None
Maryland	Appellate courts: Gubernatorial appointment from nominating commission with Senate confirmation Circuit Court: Gubernatorial appointment from nominating commission and/or nonpartisan election	Appellate courts: Gubernatorial appointment from nominating commission with Senate confirmation Circuit Court: Gubernatorial appointment from nominating commission	70
Massachusetts	Supreme Judicial Court: Gubernatorial appointment with approval of governor's council Appeals Court and Superior Court: Gubernatorial appointment from nominating commission with approval of governor's council	Supreme Judicial Court: Gubernatorial appointment with governor's council approval Appeals Court and Superior Court: Gubernatorial appointment from nominating commission with governor's council approval	70
Michigan	Supreme Court: partisan nomination; nonpartisan election Court of Appeals and Circuit Court: Nonpartisan election	Gubernatorial appointment	70
Minnesota	Nonpartisan election	Appellate courts: Gubernatorial appointment District Court: Gubernatorial appointment from nominating commission	70
Mississippi	Nonpartisan election	Gubernatorial appointment	None
Missouri	Appellate courts: Gubernatorial	Appellate courts: Gubernatorial	70

¹⁶ Vacancies are filled within one year by special election called by the governor. In the interim, vacancies are filled by Supreme Court appointment. Appointees may not run in the special election.

State	Method of Selection	Method of Filling Interim Vacancies	Mandatory Retirement Age
	appointment from nominating commission Circuit Court: Partisan election Circuit Court (Kansas City, Springfield, St. Louis): Gubernatorial appointment from nominating commission	appointment from nominating commission Circuit Court: Gubernatorial appointment Circuit Court (Kansas City, Springfield, St. Louis): Gubernatorial appointment from nominating commission	
Montana	Nonpartisan election	Gubernatorial appointment from nominating commission with Senate confirmation	None
Nebraska	Gubernatorial appointment from nominating commission	Gubernatorial appointment from nominating commission	None
Nevada	Nonpartisan election	Gubernatorial appointment from nominating commission	None
New Hampshire	Gubernatorial nomination from selection commission recommendation; appointment by the executive council ¹⁷	Gubernatorial nomination from selection commission recommendation; appointment by the executive council ¹⁸	70
New Jersey	Gubernatorial appointment with Senate confirmation	Gubernatorial appointment with Senate confirmation	70
New Mexico	Partisan election	Gubernatorial appointment from nominating commission	None
New York	Court of Appeals: Gubernatorial appointment from nominating commission with Senate consent Appellate Division, Supreme Court: Gubernatorial appointment from nominating commission ¹⁹ Supreme Court and County Court: Partisan election	Court of Appeals: Gubernatorial appointment from nominating commission with Senate Consent Appellate Division, Supreme Court: Gubernatorial appointment from nominating commission Supreme Court and County Court: Gubernatorial appointment from nominating commission with Senate Consent	70
North Carolina	Nonpartisan election	Gubernatorial appointment	72
North Dakota	Supreme Court: Nonpartisan election	Supreme Court: Gubernatorial	None

¹⁷ The executive council is a constitutionally authorized, five-member body charged with advising the governor. Council members are chosen every two years in partisan elections.

¹⁸ The executive council is a constitutionally authorized, five-member body charged with advising the governor. Council members are chosen every two years in partisan elections.

¹⁹ Justices of the appellate division are chosen from all justices elected to the Supreme Court.

State	Method of Selection	Method of Filling Interim Vacancies	Mandatory Retirement Age
	Court of Appeals: Chosen from among active and retired district judges, retired Supreme Court justices, and attorneys District Court: Nonpartisan election	appointment from nominating commission or governor may call special election Court of Appeals: N/A District Court: Gubernatorial appointment from nominating commission or governor may call special election	
Ohio	Partisan primary; nonpartisan general election	Gubernatorial appointment	70
Oklahoma	Supreme Court, Court of Criminal Appeals, Court of Civil Appeals: Gubernatorial appointment through nominating commission District Court: Nonpartisan election	Gubernatorial appointment from nominating commission	None
Oregon	Nonpartisan election	Gubernatorial appointment	75
Pennsylvania	Partisan election	Gubernatorial appointment with two-thirds Senate approval	70
Rhode Island	Supreme Court: Gubernatorial appointment from nominating commission with House and Senate confirmation Superior Court: Gubernatorial appointment from nominating commission with Senate confirmation	Supreme Court: Gubernatorial appointment from nominating commission with House and Senate confirmation Superior Court: Gubernatorial appointment from nominating commission with Senate confirmation	None
South Carolina	Legislative election	Legislative election	72
South Dakota	Supreme Court: Gubernatorial appointment from nominating commission Circuit Court: Nonpartisan election	Gubernatorial appointment from nominating commission	70
Tennessee	Supreme Court, Court of Appeals, Court of Criminal Appeals: Gubernatorial appointment from nominating commission Trial courts: Partisan election	Gubernatorial appointment from nominating commission	None
Texas	Partisan election	Gubernatorial appointment with Senate approval	75 ²⁰
Utah	Gubernatorial appointment from	Gubernatorial appointment from	75

²⁰ In 2007, Texas voters approved a constitutional amendment allowing judges who reached mandatory retirement age to finish their term of office.

State	Method of Selection	Method of Filling Interim Vacancies	Mandatory Retirement Age
	nominating commission with Senate confirmation	nominating commission with Senate confirmation	
Vermont	Gubernatorial appointment from nominating commission with Senate confirmation	Gubernatorial appointment from nominating commission with Senate confirmation	70
Virginia	Legislative election	Legislative election when General Assembly is in session. Governor fills vacancies through appointment when legislature is not in session. Appointees must then be elected at the next legislative session.	70
Washington	Nonpartisan election	Gubernatorial appointment	75
West Virginia	Partisan election	Gubernatorial appointment from nominating commission	None
Wisconsin	Nonpartisan election	Gubernatorial appointment	None ²¹
Wyoming	Gubernatorial appointment from nominating commission	Gubernatorial appointment from nominating commission	70

²¹ The Wisconsin Constitution authorizes the legislature to impose a mandatory retirement age of no less than 70. To date it has not been enacted by statute.